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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 793

MARY HAMILTON,

Petitioner,

—v.—

ALABAMA,

Respondent.

REPLY BRIEF FOR PETITIONER

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Argument

Respondent suggests that somehow the record is inadequate to present the federal question (Brief in Opposition, p. 3) and argues that the federal questions were not properly presented below (id. at 3-5).

In fact, however, the petition for writ of certiorari which sets forth verbatim the material testimony and objections complied with relevant Alabama law. See *Ex Parte Boscowitz*, 84 Ala. 463, 4 So. 279 (1888) where defendant made a claim of self-incrimination, and upon refusal to answer was held in contempt. The Alabama Supreme Court quashed the adjudication of contempt, observing as to the contents of the record before it:

> The record only presents the question proposed to the witness, and the nature of the case which was being

> tried. No other circumstances are disclosed, . . . The question, therefore, is whether his answer would tend, prima facie, to expose him to a criminal charge. 4 So. at p. 280.

And *Ex Parte Dickens*, 162 Ala. 272, 50 So. 218 (1909) holds that a contempt proceeding is separate and distinct from the main case.

Notwithstanding respondent's suggestion, the Supreme Court of Alabama did not hold that the record was inadequate, nor could it, in the light of the *Boscowitz* case. Had the Court below so desired it could have issued a writ calling for the filing of any record or records it deemed desirable. See *Ex Parte Wells*, 267 Ala. 444, 103 So. 2d 328 (1958); *Towns* v. *Malone*, 217 Ala. 273, 116 So. 131 (1928). Had respondent discerned any deficiency in the record below, it could have so alleged in a return, had a writ been granted. See *Ex Parte Morgan*, 259 Ala. 649, 67 So. 2d 889.[1]

The argument that the decision below is based upon a failure to present the federal question has no support anywhere. The federal question was clearly presented to the Supreme Court of Alabama (R. 1). It did not purport to dispose of that question on any state ground, but ruled upon the issue in general substantive terms:

> The power of the several courts to inflict summary punishment upon a witness for refusing to answer a lawful question is specifically authorized in Title 13, §2, Code of Alabama 1940. . . .

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[1] It is, of course, within the power of the Supreme Court of Alabama to order that a certified transcript or the record itself be sent up. *Cook* v. *Court of County Commissioners*, 178 Ala. 374, 59 So. 483, 484.

> Here the question was a lawful one and the witness invoked no valid legal exemption to support her refusal to answer it . . .
>
> Many witnesses are addressed by various titles, but one's own name is an acceptable appellation at law. This practice is almost universal in the written opinions of courts (R. 7).

This Court may review the federal questions presented to the Alabama Supreme Court, if the federal issues were properly presented to it and if the issues were not disposed of on adequate state grounds. This is well settled. See Robertson & Kirkham, Jurisdiction of the Supreme Court of the United States, Sections 65, 74 (Wolfson & Kurland ed., 1951).

As to the substance, respondent nowhere argues that petitioner is incorrect in claiming that for a prosecutor to address a Negro by first name while addressing whites with titles of respect enforces a racially segregationist caste system. While Emily Post and Amy Vanderbilt, cited by respondent, are authorities as to social amenities generally, the portions of their works cited by respondent nowhere purport to address themselves to the question of racial caste which is central to this cause.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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